IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7573 OF 2005

Rajaram Sidhu Ghadge Applicant

versus

State of Maharashtra Respondent

Kuldeep S. Patil for applicant.

S.S.Tatkare for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2005

PC :

1. Heard Shri Patil for applicant and Shri Tatkare for the State. The application for bail preferred by the applicant before the Sessions Court being Criminal Miscellaneous Application No.498 of 2005 was rejected by the Sessions Judge on 28th October 2005.

2. Shri Patil has raised two contentions before me. He firstly contends that the finding, even at the prima facie stage, that there is possession of the quantity which is more than commercial quantity, is totally incorrect.

3. Shri Patil relies upon Section 20 of the NDPS Act and contends that the charge is of cultivation of Cannabis Plants. In the present case, the learned Judge has proceeded on the footing that 423 kgs. Ganja was found in the possession of the applicant. In these circumstances, there is a clear error on the part of the Court in assuming that the offence is of possession when the FIR alleges cultivation of Cannabis Plants. In his submission, this fundamental aspect has been overlooked by the Court and therefore, the entire order is vitiated.

4. That apart, according to Shri Patil, assuming that allegations in the FIR are as recorded by the learned Judge in his order, yet, the finding that the said quantity was found in possession of the applicant is also vitiated by an error apparent because Gat No.334 is not in possession of the applicant. There are documents to show that apart from partition being effected even physical possession of the said land is not with the applicant. In this behalf, reliance is placed upon the extracts from 7/12 entries pertaining to the said gat number. He also

relies upon the statement of adjoining field owners.

5. Shri Tatkare - learned APP states that a serious offence has been committed and therefore, the applicant is not entitled to be released on bail.

6. In my view, considering the above submissions and since the question is of applicant’s liberty, interest of justice would be served if the order passed by the Trial Court is set aside and the criminal application preferred by the applicant is restored to it’s file for disposal on merits and in accordance in law. It would be open for the applicant to urge the abovementioned contentions and produce such materials as are available in support thereof. The Trial Judge is directed to decide the application afresh without being influenced by any observations in the earlier order. It is only in the light of the materials that are produced and in the interest of justice that the application is restored to file. The Trial Judge shall endeavour to hear and dispose of the application as expeditiously as possible and in any event within a period of four weeks from the date of receipt of a copy of

this order.

(S.C.DHARMADHIKARI, J.)